

No. 11(112)-3Lab.-79/486.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV, of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Spun Pipe Pvt. Ltd. N.I.T., Faridabad:

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA FARIDABAD.

Reference No. 53 of 1975.

between

SHRI WAZIR CHAND, WORKMAN AND THE MANAGEMENT OF M/S. SPUN PIPE PRIVATE LIMITED, N.I.T., FARIDABAD.

Present :

Shri H. R. Dua, for the workman.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/FD/75/12822-26, dated 7th March, 1975, the Governor of Haryana, referred the following dispute between the management of M/s. Spun Pipe Private Limited N.I.T., Faridabad and its workman Shri Wazir Chand to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Wazir Chand was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed on 23rd January, 1976:—

1. Whether Shri Wazir Chand was the workman of the respondent?
2. Whether termination of services of Shri Wazir Chand was justified and in order? If not, to what relief is he entitled?

The case was fixed for the evidence of the workman. The workman examined one Shri Shiv Ram, a clerk of E.S.I. office Faridabad, who gave E.S.I. number of the workman as 825160. He proved certain attested true copies of declaration forms Ex. W-1 and W-2. He also proved a copy of relevant entry relating to accident report Ex. W-4 and stated that he had prepared it from accident register, but he did not bring the original accident register. He gave the code number of the management as 12/2150. He stated that the accident report might have been received from the management, but was not traceable. In cross examination he admitted that the E.S.I. number of the employee remains the same if the management knows that the workman is already registered in the E.S.I., but if he does not know, a new number can be given. It is the duty of the workman to tell the new employer that he is already insured and the code number allotted to the management shall remain the same even in relation to a contractor of the management and that it was the duty of the main employer to send contribution and other returns in the case of employees of the contractor also. However, he could not bring the original of Ex. W-3, the ledger sheet. The workman also examined Shri S. P. Malhotra L.D.C. in the office of the Regional Provident Fund Commissioner as WW-2, who had brought the Provident Fund file of the workman, who stated that in his record the name of the management is M/s. Spun Pipe India (P) Limited and proved Ex. W-5 and W-6. He also gave the code number of the workman as 653/65 and stated that annual returns from 1966-67 and these returns bear the signatures of the Works Manager of the management and the Provident Fund Amount was received in their office from the management. He also stated that last deduction of Rs. 39.50 were received in their office in the year 1974-75. In cross examination he admitted that there is one declaration form filed by the workman in the management and the management sent the same to their office. He did not know of any other declaration form. He admitted that even if a workman is employed by a contractor, even then the payment of contribution is a responsibility of the main employer. He, further admitted in cross examination that there is only one return in which the name of all the employees including those of the contractor are entered and sent to their office, and that the workman contributed to the fund in the year 1973-74. He further stated that from the returns

in their office it cannot be said whether an employee is the employee of the contractor or of the main employer and that the record was not in his hand. He did not bring the returns and records for the year 1964-65. He admitted in cross examination that in declaration form an and is always described as an employee of the main employer. He could not bring the form under section 12(a) as they were in the custody of Chandigarh Head Office. Then the workman examined himself as WW-3. He stated that the Manager of the management was paying him wages which were Rs. 250 per mensem and he was an employee of the management and not of a contractor and that his Provident Fund and E.S.I. contribution was being deducted and the factory used to supply him uniforms, oil and soap and shoes. In cross examination he stated that he could not attend his duty on and from 26th March, 1974. He went to report for duty on 28th November, 1974, as fitness certificate was granted to him on 27th November, 1974 as he had met with an accident. He denied that he met with an accident in March, 1973 and asserted that he met with an accident in March, 1974. He stated that he did not remember whether the original of Exhibit M-1 was received by him or not. But stated that if he received it, it might be in the file of the representative. Exhibit M-1 is a letter from the management to the workman dated 10th December, 1974 reading that the workman was not an employee of the management but was an employee of one Shri Lal Chand Cages Contractor in that factory. The representative of the workman produced the original and WW-3 admitted that he had received it. He filled the E.S.I. form. He also stated Sarvshri Lal Chand, Nanak Chand and Balwant Singh were also engaged in the some work which he was doing and he was receiving wages with them. He admitted his signatures in the register of salary Exhibit M-2 and M-3. He was treated in the E.S.I. dispensary and there were about 80 or 90 workmen in the factory. He, further admitted that he used to sign the receipt of uniforms, oil and soap and that he had not received his Provident Fund amount. The workman closed his case. Then the case was fixed for the evidence of the management. The management examined their clerk Shri Gobind Ram as MW-1 who stated that he was working in that factory for the last nine years and was marking attendance of the workman and maintaining payment of wages register. He was doing all general work. He further stated

that the factory has issued attendance cards to the workmen. He had brought all relevant records from 1965 upto date. The name of the workman no where appeared in these records. He has also seen the workman going in the factory. He deposed that he saw the workman working on cages under a contractor named Shri Lal Chand who was still contractor. Shri Lal Chand used to make payment of wages to the workman. He used to deduct E.S.I. Provident Fund from the wages of the workman and giving the same to them and they were depositing that amount with the concerned departments. He had also brought the payment of wages register Exhibit M-2 and M-3 belonging to the contractor and those registers did not belong to their factory. He stated that he had not seen the deed of Shri Lal Chand. Shri Lal Chand was contractor prior to he joined the service and he did not know about the terms and conditions of the contract but he stated that the rates of contract had been changed twice. The contractor Shri Lal Chand used to tender rates and their Director used to approve. Shri Lal Chand was ill for the last two years, some 1½ years ago and at that time his Assistant paid wages to the workman who is Mr. Brij Lal. Shri Lal Chand used to give bills to the management and payments were made. He had not seen the documents of registration of the contractor. He did not know whether the management had taken permission from the Government to engage the contractor. He stated that the payment to the contractor was at piece rates i.e. per cage, according to size. He further stated their workmen were getting fixed wages and there is no piece rate in their factory. The register Exhibit M-2 and M-3 were in his hand, as he maintained them for the purpose of E.S.I. and Provident Fund. The basis of calculation was the amount of wages paid by the contractor to the workman, which was told to him by the contractor and he used to obtain the signatures of the said Shri Lal Chand which appears in these registers. He further stated that these registers remain in their custody. He denied a suggestion that Shri Lal Chand was not their contractor and all these documents have been manipulated. Leaves to the workman of the Contractor was granted by the contractor and that was not the concern of the contractor. He had not brought the register concerning the staff but had brought these concerning the workmen. He had also brought the records on the day of

evidence which consisted of registers of payment of wages of staff and workmen and attendance register of workmen only, of their factory. He further stated that the employees contribution to Provident Fund and E.S.I. were deducted on their code. The management closed their case. I have gone through the evidence of the parties, oral as well as documentary. Now I give my findings issueswise:

ISSUE NO. 1

Exhibit W-2 is a declaration in which the occupation of the workman is entered as cages making. Exhibit W-3 is contribution sheet. It is of no use except described the Insurance number of the workman as 825107. This even does not mention the name of the management anywhere. There is accident report Exhibit W-4 relating to the workman concerned in which the name of the employer is shown as that of the management. Exhibit W-1 is the E.S.I. Card which mentions the Insurance number of the workman as 825107. Exhibit W-5 and W-6 are Provident Fund slips in which the number of the workman and the amount of contribution are entered. In these the name of the management does not appear anywhere. Exhibit M-3 is wages payment register, the title page whereof reads "cages contractor Shri Lal Chand". It is from August, 1972 to February, 1978. On every page of this register "Shri Lal Chand contractor" is written. This proves that this register belongs to the said contractor Shri Lal Chand. Shri Wazir Chand name appears in it up to November, 1974 and not thereafter and Shri Wazir Chand has received payment of wages on these registers up to the month of April, 1974 and not thereafter. Up to the month of April, 1974, the workman received his wages on the register of Shri Lal Chand contractor regularly up to April, 1974. The amount of wages received by the workman shows that the workman was employed at piece-rates, as the amount differs in every month. This proves that the workman was not on fixed salary. Exhibit M-2 also pertains to Shri Lal Chand, the Cages Contractor. It is from July, 1965 to July, 1972. The workman received wages on these registers throughout till July, 1972. All these registers prove that the workman was an employee of Shri Lal Chand contractor and not of the management. This register is also signed by the said Shri Lal Chand. The entries and signatures in the register are genuine. These

are old documents and the entries in them also seem old. I have gone through all the entries in both these registers. All the entries in these registers are genuine. Exhibit W-5 and W-6 does not help the workman. Exhibit W-1 goes to show that Insurance number of the workman was 825107 and the code number of the employee is 2150. It nowhere mentions the name of the management but it is linked with the management, as WW-1 has stated that the code number of the management as allotted by their department is as 12/2150. Although the code number of the employer has been stated by the E.S.I. clerk as 12/2150 but the card shows this number as 2150 only, but this does not matter much because 2150 finds place on the card Exhibit W-1 as well as in the statement of WW-1. Exhibit W-3 does not show the name of the employer. Exhibit W-2 and W-4 shows the name of the employer as that of the management, because the declaration form is signed by the management, although Exhibit W-2 is a copy but is an attested one. Similar is Exhibit W-4 the accident report but even these two documents do not help the workman, as WW-1 and WW-2 both have admitted that the code number of the employer remains the same. The Insurance number of the workman also remains the same and that even when the workman is an employee of the contractor, the E.S.I. contribution and Provident Fund are paid by the main employer and from the records, it cannot be said whether an employee is an employee of the management or of its contractor. Therefore, the evidence of the workman does not help him and the evidence of the management given in Exhibit M-1, M-2 and M-3 prove that the workman was an employee of the contractor Shri Lal Chand and he was not the employee of the management. I, therefore, decide this issue against the workman.

ISSUE NO. 2

In issue No. 1, I have held that the workman was not the employee of the management and was the employee of Shri Lal Chand contractor, hence the question of termination of services by the management does not arise at all. This issue is decided accordingly.

As a result of my findings on the issues, I answer the reference and give my award that the workman concerned Shri Wazir Chand was not the employee of the management and was

the employee of Shri Lal Chand contractor of the management, and the management did not terminate the services of the workman concerned, hence the question of justifiability or otherwise does not arise. In these circumstances the workman is not entitled to any relief.

Dated the 13th December, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endorsement No. 15, dated the 9th January, 1979.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

The 22nd January, 1979

No. 11(112)-3 Lab-78/484.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s East India Cotton Mfg. Company, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 467 of 1978

between

SHRI RAM SAGAR, WORKMAN AND THE MANAGEMENT OF M/S EAST INDIA
COTTON MFG. COMPANY, FARIDABAD

Present:

Shri P. K. De, for the workman.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/FD/163/78/46281, dated 12th October, 1978, the Governor of Haryana referred the following dispute between the management of M/s. East India Cotton Mfg. Company, Faridabad and its workman Shri Ram Sagar, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ram Sagar was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared. The representative for the management filed a settlement Ex. M-1 and the representative for the workman stated that he had no instructions from the workman. I have gone through the settlement. It is agreed between the parties that the management will pay to the workman his service compensation, notice pay, gratuity, if due, earned wages, earned leave compensation and bonus for the years 1977-78 and 1978-79 in full and final settlement of all the accounts and dues of the workman. It was also agreed that the workman withdrew all his disputes, claims and complaint made upto 14th November, 1978. It was also agreed that the copies of the settlement shall be forwarded to the Labour Officer-cum-Conciliation Officer, Labour Commissioner, Haryana and Secretary to Government, Haryana, Labour and Employment Departments. I, accept the settlement. The management shall pay to the workman the above said dues as agreed to in the settlement and then there remains no dispute whatsoever. The workman has agreed that he will have no right for reinstatement or re-employment and will not challenge voluntary retrenchment anywhere at any time. While answering the reference, I give my award that the termination of services of Shri Ram Sagar shall be deemed justified and in order on payment of the abovesaid dues and claims of the workman to him as per the settlement, dated 4th November, 1978.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th December, 1978.

19

No. 13, dated 9th January, 1979

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 25th January, 1979

No. 11 (112)-3Lab-78/970.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Escorts Limited, Tractor and Engineering Division, 18/4 Mathura Road, Faridabad :—

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 160 of / 1974

between

SHRI NARINDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S ESCORTS LIMITED,
TRACTOR AND ENGINEERING DIVISION, 18/4, MATHURA ROAD, FARIDABAD

Present:—

Shri Sagar Ram Gupta, for the workman.

Shri K. K. Khuller, for the management.

CORRIGENDUM AWARD

The management of M/s. Escorts Limited, Tractor and Engineering Division, 18/4, Mathura Road, Faridabad, made an application under rule 28 of the Industrial Disputes Punjab Rules, 1958, for making necessary correction in the award in reference No. 160 of 1974. Notices were issued to the parties. Arguments were heard. I have gone through the said award. On the 6th page of my award in the 2nd paragraph, the following words occur which was published in the *Haryana Government Gazette*, dated 1st November, 1977 :—

“From the enquiry proceedings, I do not where find that the Enquiry Officer was impartial”.

A consideration of the whole award and the file of the case leads me to conclude that a mistake has occurred in this language. The error slipped somehow or the other. I, therefore, correct and substitute the word partial for impartial. Correctly it should be as follows :—

“From the enquiry proceedings, I do not where find that the Enquiry Officer was partial.”

This award has been published on page number 1499, 1500, 1501 and 1502 in the *Haryana Government Gazette*, dated the 1st November, 1977. The resultant correction has to be made in the above said Gazette also. I, therefore order that the word appearing in the end as “Impartial” of the first sentence of the 4th para on page 1501 of the said Gazette be substituted by the word “partial”. I delete the word “impartial” therefrom and insert the word “partial” therein. The word “impartial” should not be read. Instead the word “partial” should be read at the above-said place in the above-stated Gazette.

NATHU RAM SHARMA,

Dated 29th December, 1978.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 17, dated 18th January, 1979

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.